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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/863,585	05/16/2001	Phyllis Leithem	177079-00058	1886

31013 7590 03/26/2007
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INTELLECTUAL PROPERTY DEPARTMENT
1177 AVENUE OF THE AMERICAS
NEW YORK, NY 10036

EXAMINER

STEPHENS, JACQUELINE F

ART UNIT	PAPER NUMBER
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3761

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
2 MONTHS	03/26/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/863,585
Filing Date: May 16, 2001
Appellant(s): LEITHEM ET AL.

William J. Spatz
For Appellant

EXAMINER'S ANSWER

Art Unit: 3761

This is in response to the appeal brief filed 12/20/06 appealing from the Office action mailed 6/25/04.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The following are the related appeals, interferences, and judicial proceedings known to the examiner, which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

Application 09/334,125

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

3,658,064	Pociluyko	4-1972
2,083,575	Novak	6-1937

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim 104 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pociluyko USPN 3658064 in view of Novak USPN 2083575.

Pociluyko discloses an absorbent article comprising at least one fluid permeable topsheet layer **51** and at least one substantially fluid impermeable backsheet layer **10** and a sublayer material **50** between the topsheet layer and the backsheet layer (Pociluyko Figures 6 and 7). The sublayer material **50** of Pociluyko comprises a fluff layer **52**, comprising a pulp in the amount of 35-100%, which meets the claimed amount (col. 4, lines 55-61). Pociluyko discloses fluff pulp is desired because of its low cost and high absorptive capacity (Pociluyko col. 4, lines 44-54). Pociluyko is silent as to the method of manufacturing the fluff pulp.

Novak discloses a method for making fluff pulp capable of being used for personal hygiene articles, due to its soft and absorbent characteristics (Novak page 2, col. 1, lines 15-20). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the invention of Pociluyko with a fluff pulp made by the method taught in Novak. Doing so would provide an absorbent product containing fluff pulp material that 1) is very soft, absorbent, and easily saturated; and 2) will not deteriorate in storage and can be conveniently shipped to distant point in the same way as in the case of commercial wet pulp (Novak page 1, col. 1, lines 6-12; page 2, col. 2, lines 21-26).

The method of making the absorbent article of Pociluyko/Novak comprises treating a wood fiber pulp containing wood fibers with a base at a temperature range of 15° – 60° C (Novak page 1, col. 1, lines 12-40). The examiner interprets the lower range of the temperature, 15° C, to be cold as 'cold' is a relative term. Therefore, relative to a boiling or hot caustic solution, a temperature of 15° C is considered cold by the examiner. Novak further discloses fluffing the treated wood fiber pulp to form an absorbent sublayer material comprised of fluffed base-treated wood fiber pulp (Novak page 1, col. 2, line 54 through page 2, col. 1, line 20; page 2, col. 1, line 75- col. 2, line 11). Pociluyko/Novak discloses the sublayer material contains 35-100% fluff (Pociluyko col. 4, lines 54-57). The treated wood fiber pulp of Pociluyko/Novak is not subjected to chemical crosslinking.

(10) Response to Argument

Applicant's arguments filed 12/20/06 have been fully considered but they are not persuasive.

Applicant argues that neither Pociluyko nor Novak suggest that the Novak pulp would be suitable for use in the claimed absorbent composites and the pulp product of Novak is a wet-laid felt and not a fluff material as the Examiner has alleged. Novak teaches the object of his invention is to impart more absorbent properties to the paper product (page 1, col. 1, lines 5-12). Applicant is directed to page 1, col. 2, line 54 through page 2, col. 1, line 7 where Novak discloses circulating the stock in a beater engine and again on page 2, col. 1, line 68 through col. 2, line 11, where Novak discloses beating the stock. The process of beating the pulp equates to fluffing. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., dry shredded fluff) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant argues one would not substitute the 'felt' of Novak for the fluff material of Pociluyko to produce the presently claimed invention. The examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or

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motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Novak teaches a method of making a fluff pulp that is highly absorbent and soft (Novak page 2, col. 1, lines 15-20), and, Pociluyko teaches a fluff pulp with those characteristics is desired (Pociluyko col. 4, lines 44-54). It would have been obvious to treat the fluff pulp of Pociluyko in a manner as that disclosed in Novak for the benefits that both references disclose.

In response to applicant's argument based upon the age of the references (Novak), contentions that the reference patents are old are not impressive absent a showing that the art tried and failed to solve the same problem notwithstanding its presumed knowledge of the references. See *In re Wright*, 569 F.2d 1124, 193 USPQ 332 (CCPA 1977).

Applicant further argues the prior art teaches away from the use of pulp which is not chemically cross linked, however, applicant has not indicated in the prior art reference(s), which are currently relied on to reject the claims, where the disclosure teaches away from the present invention.

For the above reasons, it is believed that the rejections should be sustained.

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(11) Related Proceeding(s) Appendix

Copies of the court or Board decision(s) identified in the Related Appeals and Interferences section of this examiner's answer are provided herein.

Respectfully submitted,




Jacqueline F Stephens
Examiner
Art Unit 3761

March 15, 2007

Conferees:

Nick Lucchesi,
Supervisory Patent Examiner
Art Unit 3763



NICHOLAS D. LUCCHESI
SUPERVISORY PATENT EXAMINER
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Tatyana Zalukaeva,
Supervisory Patent Examiner
Art Unit 3761

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

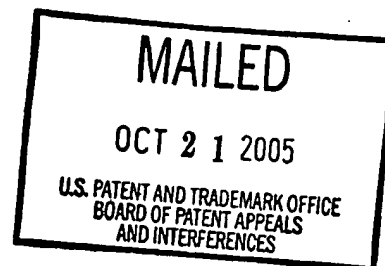
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte PHYLLIS LEITHEM, CHARLES A. KREMERS, W. PAUL HARRELL,
STEPHEN LEWIS, KARL D. SEARS, QUAN HE and PETER R. ABITZ

Appeal No. 2005-2682
Application No. 09/334,125

ON BRIEF



Before KIMLIN, WALTZ and TIMM, Administrative Patent Judges.

KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 61 and 62. Claim 61 is illustrative:

61. A method for making an absorbent composite useful for personal hygiene articles which comprises: treating a wood fiber pulp containing wood fibers with a base at a temperature ranging from 15°C. to about 60°C. thereby forming a treated wood fiber pulp containing wood fibers; fluffing the treated wood fiber pulp to form an absorbent sublayer material comprised of fluffed base-treated wood fiber pulp; providing at least one fluid permeable topsheet layer and at least one substantially fluid impermeable backsheet layer; and interposing the sublayer material between the topsheet layer and the backsheet layer wherein

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the treated wood fiber pulp is not subjected to chemical crosslinking.

The examiner relies upon the following references as evidence of obviousness:

Novak	2,083,575	Jun. 15, 1937
Pociluyko	3,658,064	Apr. 25, 1972

Appellants' claimed invention is directed to a method for making an absorbent composite that is used in making personal hygiene products which comprises fluffing wood fiber pulp that has been treated with a base, and using the fluffed pulp to form an absorbent sublayer between a permeable topsheet and a fluid impermeable backsheet. The base treated pulp is not subjected to chemical crosslinking. According to appellants, "it has been conventional to use chemical crosslinking to increase the stiffness of the wood fiber pulp fibers, so that a fiber matrix made from them retains its bulk and pore volume when wet, thereby enhancing its absorbency" (page 4 of principal brief, second paragraph). Appellants maintain that eliminating the chemical crosslinking of the pulp, and its expense, is the expressed objective of the present invention.

Appealed claims 61 and 62 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Pociluyko in view of Novak.

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Appellants submit that "[c]laims 61 and 62 stand or fall together" (page 5 of principal brief, last paragraph).

Accordingly, claim 62 stands or falls together with claim 61.

We have thoroughly reviewed each of appellants' arguments for patentability. However, we agree with the examiner that the claimed subject matter would have been obvious to one of ordinary skill in the art within the meaning of Section 103. Accordingly, we will sustain the examiner's rejection.

There's no dispute that Pociluyko, like appellants, discloses a method for making an absorbent composite useful for personal hygiene products comprising interposing a fluffed pulp layer in between a fluid permeable topsheet layer and a fluid impermeable backsheet layer. Pociluyko is silent with respect to whether the pulp layer is subjected to chemical crosslinking. However, notwithstanding whether Novak discloses a method of making fluff pulp, as urged by the examiner, we find that it would have been obvious for one of ordinary skill in the art to make the fluff layer-containing composite of Pociluyko without chemically crosslinking the pulp. Since appellants acknowledge that it was known in the art to make wood pulp fluff by the claimed method, with the exception of including chemical

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crosslinking,¹ we find that it would have been obvious for one of ordinary skill in the art to perform the known technique in making the fluff pulp of Pociluyko, without the chemical crosslinking. It is well settled that the elimination of a feature disclosed by the prior art along with its attendant function and advantage is a matter of obviousness for one of ordinary skill in the art. In re Thompson, 545 F.2d 1290, 1294, 192 USPQ 275, 277 (CCPA 1976); In re Kuhle, 526 F.2d 553, 555, 188 USPQ 7, 9 (CCPA 1975); In re Marzocchi, 456 F.2d 790, 793, 173 USPQ 228, 229-30 (CCPA 1972); In re Larson, 340 F.2d 965, 969, 144 USPQ 347, 350 (CCPA 1965); In re Keegan, 331 F.2d 315, 319, 141 USPQ 512, 515 (CCPA 1964); In re Porter, 68 F.2d 971, 973, 20 USPQ 298, 301 (CCPA 1934). See also In re Edge, 359 F.2d 896, 899, 149 USPQ 556, 557 (CCPA 1966). In the present case, it would have been obvious for one of ordinary skill in the art to omit the step of chemical crosslinking in making the fluff pulp

¹Appellants state that "[t]he **Chatterjee** reference cited by the Examiner describes the same procedure for making wood pulp fluff at **Chatterjee**, column 6, lines 18-34" (page 7 of principal brief, first paragraph). We note, however, that U.S. Patent No. 3,392,209, cited at page 3 of the principal brief, is neither a patent to Chatterjee nor the patent number cited for Chatterjee on appellants' Information Disclosure Statement. Furthermore, the cited portions of Chatterjee appearing in the principal and reply briefs do not correlate to U.S. Patent No. 4,105,033 to Chatterjee cited on the IDS.

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along with the benefits described by appellants, namely, increasing the stiffness of the pulp fibers so that the fiber matrix retains its bulking and pore volume when wet, thereby enhancing its absorbency (see page 4 of principal brief, second paragraph). Appellants have not established on this record that they have retained the advantages of chemical crosslinking without incurring its expense, or have achieved unknown advantages which outweigh the loss of the known benefit of chemical crosslinking. It would appear that appellants have done nothing more than eliminate a costly process step in the prior art without demonstrating that they obtain a product that is at least comparable in quality to the product of Pociluyko and the admitted prior art.

As a final point, we note that appellants base no argument upon objective evidence of nonobviousness, such as unexpected results, which would serve to rebut the inference of obviousness established by the prior art.

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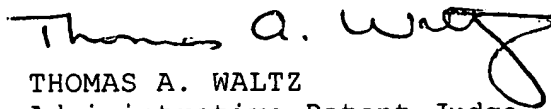
In conclusion, based on the foregoing, the examiner's decision rejecting the appealed claims is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED



EDWARD C. KIMLIN)
Administrative Patent Judge)



THOMAS A. WALTZ)
Administrative Patent Judge)

BOARD OF PATENT
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INTERFERENCES



CATHERINE TIMM)
Administrative Patent Judge)

ECK:hh

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Application No. 09/334,125

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